

RULES OF THE COMMISSION ON JUDICIAL CONDUCT

Effective April 1, 1988

SCOPE AND TITLE

These rules govern the procedures of the Commission on Judicial Conduct in the exercise of its jurisdiction pursuant to Chapter 211C of the General Laws as appearing in St. 1987, c. 656, and apply to proceedings which are initiated on or after April 1, 1988. These rules shall be known and may be cited as the Rules of the Commission on Judicial Conduct (R.C.J.C.). (Any proceedings initiated prior to April 1, 1988, shall be governed by the rules which were in effect under Chapter 211C before April 1, 1988.)

RULE 1. DEFINITIONS

- A. "Anonymous Complaint" means a complaint, written or oral, received by the Commission, in which the identity of the complainant is not revealed.
- B. "Chairman" and "Vice Chairman" refer to members of the Commission elected as such by vote of the Commission. Whenever used in these rules, the word "Chairman" shall include, in the absence of the Chairman, the Vice Chairman or other member acting as Chairman.
- C. "Commission" means the Commission on Judicial Conduct.
- D. "Complainant" means a person or entity who has communicated to the Commission a complaint against a judge.
- E. "Complaint" means any oral or written statement which alleges judicial misconduct or physical or mental disability of a judge.
- F. "Executive Director" means the Executive Director of the Commission or a member of the Commission's staff acting under the Executive Director's supervision.
- G. "Judge" means a judge or justice of any court of this Commonwealth.
- H. "Notoriety" means broad public knowledge.
- I. "Reasonable Information" means any information, including reports in the news media, which comes to the attention of the Commission and which contains credible allegations about a judge that, if true, would constitute misconduct or disability within the jurisdiction of the Commission under Chapter 211C.
- J. "Shall" is mandatory; "may" is permissive.
- K. "Special Counsel" means an attorney, appointed by the Supreme Judicial Court at the request of the Commission, to conduct investigations, to make recommendations to the Commission, and/or to present evidence at a hearing, with respect to a complaint or charges against a judge, or to take any other action related thereto which the Commission may direct.
- L. "Statement of Allegations" means a clear statement of the allegations against a judge and the alleged facts forming their basis.
- M. "Sworn Complaint" means a detailed written complaint which the complainant signs under oath and files, at the request of the Commission.

Amended September 14, 1999, effective October 1, 1999.

RULE 2. COMPOSITION OF COMMISSION

A. The composition of the Commission and terms of its members are as provided in Chapter 211C.

B. A member of the Commission shall not participate in any proceeding in which the impartiality of that member might reasonably be questioned. Disqualification pursuant to this section shall be by the member involved or by affirmative vote of at least five (5) members of the Commission.

(1) Upon the call of the Chairman, an alternate member shall serve in place of a member of the Commission who has been disqualified from participating in a Commission proceeding or is otherwise unable to serve. Whenever an alternate member is called to serve in the place of a member of the Commission, the judge in question and the complainant shall be so notified.

C. If a Commission member ceases to be qualified for the appointment to represent the category for which he was appointed, resigns, or becomes permanently unable to serve for any reason, a vacancy shall occur. An appointment to fill a vacancy for the duration of the unexpired term shall be made by the appropriate appointing authority forthwith.

RULE 3. ORGANIZATION OF COMMISSION

A. A Chairman and Vice Chairman shall be elected annually by the members of the Commission.

B. Meetings of the Commission shall be held upon the call of the Chairman or the written request of at least three members of the Commission. Meetings shall not be held on less than three days notice; but this requirement may be waived by consent of all the members. The Chairman shall preside at meetings of the Commission, and the Vice Chairman shall act in the absence or disqualification of the Chairman. In the absence or disqualification of both the Chairman and the Vice Chairman, the members shall select one among them as acting Chairman.

C. A quorum of the Commission shall consist of five members, including at least one judge, one member of the bar who is not a judge, and one lay person who is not a member of the bar. An affirmative vote of at least five members of the Commission is required to dismiss, informally adjust, or otherwise dispose of a proceeding; to issue formal charges against a judge; or to make recommendations to the Supreme Judicial Court regarding disciplinary action. A vote may be taken by telephone when a decision is required sooner than a meeting could be held, unless any member objects.

RULE 4. JURISDICTION OF THE COMMISSION

A. The Commission shall have the authority to receive information, conduct investigations and hearings, and make recommendations to the Supreme Judicial Court concerning

allegations of judicial misconduct or disability.

B. The Commission's jurisdiction shall include the conduct of all active judges prior to, as well as during, their service in judicial office and shall also include the conduct of a retired judge who has been recalled.

RULE 5. CONFIDENTIALITY

A. All proceedings prior to a determination of sufficient cause and the filing of formal charges shall be confidential.

B. Records, files, and reports of the Commission shall be confidential, and no disclosure shall be made, except as follows:

(1) Upon waiver in writing by the judge at any stage of the proceedings;

(2) Upon inquiry by an appointing authority or by a state or federal agency conducting investigations on behalf of such authority in connection with the selection or appointment of judges; or upon inquiry in connection with the assignment or recall of a retired judge to judicial duties, by or on behalf of the assigning authority, in which case the Commission may:

(a) divulge whatever information is a matter of public record; and

(b) after obtaining the judge's signed waiver, divulge other relevant information; or

(c) divulge other relevant information after giving written notice to the judge affected of its intention to do so and allowing the judge seven (7) days to respond.

(3) In cases in which the subject matter has become public, the Commission may issue such statements as it deems appropriate in order to confirm the pendency of the investigation, to clarify the procedural aspects of the proceedings, to explain the right of the judge to a fair hearing, or to state that the judge denies the allegations;

(4) Upon filing of formal charges, in which case only the formal charges, the answer thereto, the evidentiary hearings thereon, and the final recommendation by the Commission as to disposition shall become public, except as provided in paragraph D below.

C. Where the circumstances necessitating the initiation of an inquiry include notoriety, or where the conduct in question is a matter of public record, information concerning the lack of cause to proceed may be released by the Commission.

D. Proceedings may remain confidential, even after a finding of sufficient cause, if the judge, the Commission, and the complainant, if any, all concur.

E. If, in the course of its proceedings, the Commission becomes aware of credible evidence that any person has committed a crime, the Commission may report such evidence to the appropriate law enforcement agency.

RULE 6. COMMISSION PROCEEDINGS: INITIAL STAGES; GENERAL PROVISIONS

A. Initiation of Proceeding. A Commission proceeding relating to the conduct of a judge is initiated when the Commission receives a written or oral complaint, or when the Commission by motion creates its own complaint, on the basis of reasonable information.

B. Screening. The Executive Director shall cause each complaint to be screened promptly upon its receipt. The screening may include communication with the complainant, if any, to clarify the contents of the complaint, but shall not include any investigation of the allegations set forth in the complaint.

C. Docketing and Notification.

(1) If the Executive Director determines after screening that the complaint does not set forth facts concerning a judge's conduct which, if true, would constitute misconduct or disability within the Commission's jurisdiction, the Executive Director shall notify the complainant that the complaint will not be docketed or investigated by the Commission.

(2) If the Executive Director determines after screening a complaint that it alleges specific facts which, if true, would constitute misconduct or disability within the Commission's jurisdiction, the Executive Director shall docket the complaint.

(3) Except as provided in Rules 6(D), 6(E), 6(F) and 6(G), the Executive Director shall notify the judge of the complaint promptly after it is docketed. Notification shall be by certified mail or registered mail, addressed to the judge's last known place of residence, unless the judge has requested a different mailing address or the use of regular mail. Except, where notice of the complaint is delayed or withheld pursuant to Rule 6(G), the Executive Director shall not conduct any inquiry into or investigation of the complaint until notice has been sent to the judge.

D. Frivolous or Unfounded Complaints. If, on the basis of screening, the Executive Director is of the opinion that a docketed complaint is frivolous or unfounded, the Executive Director shall promptly recommend its dismissal to the Commission before notifying the judge of the complaint. If a majority of the Commission votes to dismiss the complaint, the Executive Director shall promptly notify the complainant of the dismissal and the judge of both the complaint and its dismissal. If a majority of the Commission does not vote to dismiss the complaint, except as provided in Rule 6(G), the Executive Director shall promptly notify the judge of the complaint in accordance with Rule 6(C)(3).

E. Stale Complaints. When a complaint is docketed in which the allegations arise out of acts or omissions all occurring more than one year prior to the date the complaint was filed the Executive Director shall, before notifying the judge of the complaint and before undertaking any inquiry or investigation of its allegations, make a recommendation to the Commission as to whether there exists good cause to investigate the complaint. If a majority of the Commission determines that there is not good cause to investigate the complaint, the complaint shall be dismissed without investigation, and the complainant, if any, as well as the

judge, shall be so notified. If a majority of the Commission determines that there is good cause to investigate the complaint, except as provided in Rule 6(G), the Executive Director shall notify the judge of the complaint pursuant to Rule 6(C)(3). When a complaint alleges a pattern of recurring misconduct the last episode of which is alleged to have occurred less than one year prior to the filing of the complaint, a determination by the Commission of “good cause” pursuant to this Rule is not necessary.

F. Anonymous Complaints. Following the docketing of an anonymous complaint pursuant to Rule 6(C)(2), the Executive Director shall not conduct any inquiry or investigation of it unless the Commission, upon the recommendation of the Executive Director, determines by majority vote that the allegations of the anonymous complaint would, if true, constitute misconduct or disability within the jurisdiction of the Commission, and the seriousness or the notoriety of the misconduct alleged outweighs the potential prejudicial effect of an investigation into the merits of the complaint. If the Commission does not make such a determination, the complaint shall be dismissed, and the Executive Director shall promptly notify the judge of both the complaint and its dismissal. If the Commission does make such a determination, except as provided in Rule 6(G), the Executive Director shall promptly notify the judge of the anonymous complaint in accordance with Rule 6(C)(3).

G. Withholding Notification. If the Executive Director is of the opinion that, because of the nature of the complaint or the identity of the complainant, notification to the judge would create a substantial risk that evidence material to its investigation might be lost or destroyed, or that there is a substantial danger of reprisal or retaliation by the judge against the complainant or any other person mentioned in the complaint, the Executive Director shall recommend to the Commission that notice of the complaint to the judge be delayed or that notice of certain information in the complaint be delayed. No inquiry or investigation into the complaint beyond the screening process shall take place until the Commission has voted on the Executive Director’s recommendation.

(1) If a majority of the Commission not vote to approve any delay in notifying the judge of the complaint in whole or in part, the Executive Director shall promptly notify the judge of the complaint in accordance with Rule 6(C)(2).

(2) If a majority of the Commission determines that notice to the judge of the complaint in its entirety would create a substantial risk of lost or destroyed evidence or of reprisal, the Commission shall vote to approve the delay in notifying the judge of the complaint in whole or in part. If the Commission approves a delay in providing notice to the judge of any portion of the complaint, the Executive Director shall proceed with an investigation of the complaint pursuant to Rule 6H. If the Commission approves a delay in providing notice to the judge of certain information in the complaint such as the identity of the complainant, the Executive Director shall promptly notify the judge in accordance with Rule 6(C)(3) of all portions of the complaint for which no delay was approved before proceeding with any investigation.

(3) Notice of a complaint may be delayed pursuant to this paragraph only until the

Commission obtains the necessary evidence or the risk of reprisal ends.

(4) The Commission shall take reasonable steps to insure that as much notice as possible of the complaint's allegations is provided to the judge at the earliest time feasible in accordance with this Rule.

H. Investigation. Unless a complaint is dismissed pursuant to Rule 6(D), 6(E) or 6(F), and except as provided in Rule 6G, after notice is given to the judge pursuant to Rule 6(C)(3), the Executive Director shall initiate a discreet and confidential investigation and evaluation of the complaint.

I. Request for Special Counsel. If in the course of an investigation the Executive Director concludes that Special Counsel is required, the Executive Director shall recommend that the Commission request the appointment of a Special Counsel by the Supreme Judicial Court. The Commission may also take such action upon its own motion.

J. Sworn Complaint or Statement of Allegations. Within ninety (90) days after the initiation of proceedings, the Executive Director shall recommend to the Commission whether there is adequate reason to proceed to the preparation of a Sworn Complaint or Statement of Allegations.

(1) The Commission shall so decide by majority vote.

(2) If the Executive Director recommends that further investigation is necessary before making this determination, the Commission may vote to continue the investigation on a month-to-month basis.

(3) If the Commission finds that there is sufficient cause to proceed, the complainant, if any, shall be asked to file a detailed, signed, Sworn Complaint against the judge. The Sworn Complaint shall state the facts constituting the alleged misconduct. Immediately upon receipt of the Sworn Complaint, the Executive Director shall make written acknowledgment thereof to the complainant.

(4) When a Sworn Complaint is not obtained, a Statement of Allegations against the judge and the alleged facts forming their basis shall be prepared by the Executive Director. Where more than one act of misconduct is alleged, each act should be clearly set forth in the Sworn Complaint, or in the Statement of Allegations, as the case may be.

(5) In any case where the judge has not yet been notified of the entire complaint pursuant to Rule 6(G), if the Commission determines by a majority vote that there remains an ongoing danger of reprisal, the Sworn Complaint or the Statement of Allegations may be drafted so as to conceal the complainant's identity.

K. Same; Service. The judge shall immediately be served with a copy of the Sworn Complaint or Statement of Allegations.

L. Same; Answer. Within twenty-one (21) days after the service of the Sworn Complaint or the Statement of Allegations, the judge may file a written answer with the Executive Director and may request a personal appearance before the Commission, in lieu of or in addition to a written response. If the judge elects to appear personally, his or her statement shall be

recorded.

M. Same; Dismissal. After the judge's answer and personal appearance, if any, the Commission may terminate the proceeding and dismiss the complaint and, in that event, shall give notice to the judge and the complainant that it has found insufficient cause to proceed.

N. Same; Amendment. Amendment of the allegations regarding the misconduct of a judge, whether presented to the Commission in a Sworn Complaint or in a Statement of Allegations, shall be permitted prior to a finding of sufficient cause, provided that notice thereof and an opportunity further to respond within twenty-one (21) days is given to the judge.

O. Right to Counsel. The judge shall be entitled to counsel of the judge's own choice.

P. Right to Compel Attendance of Witnesses and Inspection of Records. At any stage of the proceeding, the Commission or its designee may administer oaths or affirmations and shall be entitled to compel the attendance and testimony of witnesses, including the judge himself or herself, and the production of papers, books, accounts, documents, electronic recordings, other tangible things, or any other relevant evidence or testimony.

(1) Upon receiving the Sworn Complaint or Statement of Allegations, the judge shall become entitled to compel by subpoena the attendance and testimony of witnesses through depositions, and to provide for the inspection of documents, books, accounts, written or electronically-recorded statements, and other records.

(2) Witnesses may be interviewed, whether or not under oath and whether or not their statements are memorialized, without the presence of other participants. In other circumstances, statements may be taken as depositions, in accordance with Rule 9.

Q. Privilege. A complaint submitted to the Commission or its staff, or testimony with respect thereto, shall be absolutely privileged. No civil action predicated on the complaint shall be instituted against a complainant or a witness, or against counsel to either of them.

R. Recommendation Concerning Assignment. At any time the Commission may recommend to the Supreme Judicial Court, or to the Chief Justice for Administration and Management and the appropriate Chief Justice, the non-assignment or special assignment of a judge, pending the final disposition of a proceeding. The Commission shall state the reasons for its recommendation. A copy of any such recommendation shall be sent by the Commission to the judge.

S. Consultation. In the course of a proceeding, the Commission may consult with the Chief Justice for Administration and Management and the appropriate Chief Justice about administrative matters.

T. Record of Commission Proceedings. The Commission shall keep a record of all proceedings concerning a judge. The Commission's findings, conclusions and recommendations shall be entered in the record.

U. Extensions of Time. The Chairman of the Commission may for good cause extend the time for the filing of an answer, discovery, commencement of a hearing, or transmittal of the Hearing Officer's report, and any other time limit set herein.

Amended September 14, 1999, effective October 1, 1999.

RULE 7. SUFFICIENT CAUSE FOR FORMAL CHARGES

A. Following the expiration of the twenty-one (21) days allowed for the judge's response, for any proceeding not dismissed, the Commission shall thereafter hold a formal meeting which shall be conducted in private, at which the rules of evidence need not be observed. The judge shall have the right to make a personal appearance with his attorney, but not to be present during the Commission deliberations.

B. At this meeting the Commission shall vote to dispose of the case in one of the following ways:

(1) If it finds that there has been no misconduct, the Executive Director shall be instructed to send the judge and the complainant notice of dismissal.

(2) If it finds that there has been misconduct for which a private reprimand constitutes adequate discipline, and if the judge consents, it shall issue the reprimand. The complainant shall be notified that the matter has been so resolved.

(3) If it finds that there has been conduct that is or might be cause for discipline but for which an informal adjustment is appropriate, it may, with the agreement of the judge, so inform or admonish the judge, direct professional counseling or assistance for the judge, or impose conditions on the judge's future conduct. The complainant shall be notified that the matter has been so resolved. When either conditions or treatment is prescribed, the Commission shall provide for supervision, enforcement thereof, or both.

(4) If it finds by a preponderance of the credible evidence that there is sufficient cause to believe that there has been misconduct of a nature requiring a formal disciplinary proceeding, the Commission shall issue formal charges against the judge. A copy of the formal charges shall be served promptly upon the judge, and the judge shall have ten (10) days to respond.

RULE 8. SCHEDULING OF FORMAL HEARING

A. Upon the filing of the judge's written response to the formal charges or the expiration of the time for its filing, a copy of the formal charges and of the judge's written response shall be filed with the Supreme Judicial Court, which shall promptly appoint a Hearing Officer.

B. Immediately upon the appointment of a Hearing Officer by the Supreme Judicial Court, the Commission shall schedule a hearing to take place in not less than thirty (30) nor more than sixty (60) days. The Commission shall immediately notify the judge and all counsel of the time and place for the hearing.

RULE 9. DISCOVERY DURING THE FORMAL PROCEEDING STAGE

A. Attached to the notice required by Rule 7B(4) shall be further notice that the Commission shall, within a reasonable time, make available for inspection upon the written request of the judge all books, papers, records, documents, electronic recordings, and other tangible things within the custody and control of the Commission which are relevant to the issues of the disciplinary proceeding, and any written or electronically recorded statements within the custody and control of the Commission which are relevant to the issues of the disciplinary proceeding. The failure of the Commission to furnish timely any such materials provided for herein shall not affect the validity of any proceedings before the Commission, provided that such failure is not substantially prejudicial to the judge.

B. Within thirty (30) days after service of the formal charges, the Commission or the judge

(1) May upon written request to the appropriate party prior to the hearing:

(a) Have made available to him for inspection and copying within a reasonable period of time all books, papers, records, documents, electronic recordings, or other tangible things which that party intends to present at a hearing.

(b) Obtain the names and addresses of witnesses to the extent known to a party in the proceeding, including an identification of those intended to be called to testify at the hearing.

(c) Have made available to him for inspection and copying within a reasonable period of time any written or electronically recorded statements made by witnesses who will be called to give testimony at the hearing.

(2) May, upon written application to the Commission, upon such terms and conditions as the Commission may impose:

(a) Depose within or without the Commonwealth persons having relevant testimony. The complete record of the testimony so taken shall be made and preserved by stenographic record or electronic recording.

(i) The written application to the Commission shall state the name and post office address of the witness, the subject matter concerning which the witness is expected to testify, the time and place of taking the deposition, and the reason why such deposition should be taken.

(ii) Unless notice is waived, no deposition shall be taken except after at least seven (7) days notice to the other parties.

(iii) Unless otherwise directed by the Commission, the deponent may be examined regarding any matter not privileged which is relevant to the subject matter of the proceedings. Parties shall have the right of cross-examination, and objection. In making objections to questions or evidence, the grounds relied upon shall be stated briefly, but no transcript filed by the notarial officer shall include argument or debate. Objections to questions or evidence shall be noted by the notarial officer upon the deposition, but he shall not have the power to decide on the competency,

materiality, or relevancy of evidence. Objections to the competency, relevancy, or materiality of the testimony are not waived by failure to make them before or during the taking of the deposition.

(b) Subpoena relevant witnesses and documents.

(c) Seek any limitation or protection for any discovery permitted by this rule.

C. Nothing in these rules shall be construed to require the discovery of any report made to the Commission by Special Counsel or other person conducting an investigation for the Commission. Furthermore, in granting discovery the Commission shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a witness or party in these proceedings.

D. Other issues relative to discovery which are not covered in these rules shall be addressed or resolved in accordance with the comparable provisions of the Massachusetts Rules of Civil Procedure.

RULE 10. FORMAL HEARING

A. The formal hearing shall be conducted before the Hearing Officer appointed by the Supreme Judicial Court.

B. The hearing shall be open to the public. The rules of evidence applicable to civil proceedings in Massachusetts shall apply, and all testimony shall be under oath. Commission attorneys, or Special Counsel retained for the purpose, shall present the case. The judge whose conduct is in question shall be permitted to adduce evidence and produce and cross-examine witnesses. The Commission shall have the burden of proving the charges by clear and convincing evidence. Every hearing shall be transcribed.

C. The formal charges may be amended after commencement of the public hearing only if the amendment is technical in nature and if the judge and his counsel are given adequate time to prepare a response.

RULE 11. POST-HEARING PROCEDURE

A. Within thirty (30) days after the conclusion of the hearing, the Hearing Officer shall submit to the Commission and to the judge a report which shall contain proposed findings and recommendations, the transcripts of testimony, and all exhibits.

B. Upon receipt of the report of the Hearing Officer, the Commission shall send a copy of the report to the complainant forthwith.

C. Within twenty (20) days after receipt of such report, counsel for the judge and for the Commission shall each be allowed to submit to the Commission written objections to the proposed findings and recommendations. Any such objections shall become part of the record.

D. Within the same twenty (20) day period the judge and the complainant, if any, may file a written request to be heard before the Commission regarding its recommendation for discipline.

E. If either participant does so request, notice shall be given to both as to the scheduled time and place for such hearing, at least seven (7) days in advance. Such hearing shall be public, but Commission deliberations regarding such recommendation shall be conducted in executive session.

F. Unless there is good cause for delay, the Commission shall reach a decision on the basis of the full record within ninety (90) days after the hearing concerning recommendation for discipline, if there is such a hearing, or otherwise within ninety (90) days after receipt of the Hearing Officer's report. Its conclusions may differ from those proposed by the Hearing Officer. Its decision shall state specific reasons for all conclusions and recommendations.

RULE 12. CASES INVOLVING ALLEGATIONS OF MENTAL OR PHYSICAL DISABILITY

In considering allegations of mental or physical disability, the Commission shall, insofar as applicable and except as provided below pursuant to Chapter 211C, section 10, follow procedures established by these rules.

A. If in a matter relating to mental or physical disability the judge is not represented by counsel, the Commission shall appoint an attorney to represent him at public expense.

B. If a complaint or statement of allegations involves the mental or physical health of a judge, a denial of the alleged disability or condition shall constitute a waiver of medical privilege and the judge shall be required to produce his medical records.

C. In the event of a waiver of medical privilege, the judge shall be deemed to have consented to an examination by a qualified medical practitioner designated by the Commission. The report of the medical practitioner shall be furnished to the Commission and the judge.